

12755

RECORDATION NO. _____ FILED 1425

CRAVATH, SWAINE & MOORE JAN 12 1981 - 3 20 PM

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

INTERSTATE COMMERCE COMMISSION

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RECORDATION NO. _____ FILED 1425 HANOVER 2-3000

TELEX

CA 233663

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ADDRESSES
CRAVATH, N.Y.
CRAVATH, PARIS
CRAVATH, LONDON E.

No.

Date JAN 12 1981

Fee \$ 100.00

ICC Washington, D.C.

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INTERSTATE COMMERCE COMMISSION

JAN 12 1981 - 3 20 PM

INTERSTATE COMMERCE COMMISSION

JAN 12 1981 - 3 20 PM

INTERSTATE COMMERCE COMMISSION

January 12, 1981

General American Transportation Corporation
Lease Financing Dated as of December 15, 1980
14-1/4% Conditional Sale Indebtedness due July 8, 2001
[CS&M Ref.: 1629-035]

Dear Sirs:

Pursuant to 49 U.S.C. § 11303(a), I enclose here-with on behalf of General American Transportation Corporation for filing and recordation counterparts of the following documents:

(1) (a) Conditional Sale Agreement dated as of December 15, 1980, between Security Pacific Equipment Leasing, Inc., as Vendee, and General American Transportation Corporation, as Builder, Vendor; and

(b) Agreement and Assignment dated as of December 15, 1980, between General American Transportation Corporation, as Builder, and Mercantile-Safe Deposit and Trust Company, as Agent, Assignee.

(2) (a) Lease of Railroad Equipment dated as of December 15, 1980, between General American Transportation Corporation, as Lessee, and Security Pacific Equipment Leasing, Inc., as Lessor; and

(b) Assignment of Lease and Agreement dated as of December 15, 1980, between Security Pacific Equipment

JAN 15 1981
FILED
BRANCH

Edward J. Davis
New Member
A
B
C
Countersigned

Leasing, Inc., as Vendee, Lessor, and Mercantile-Safe Deposit and Trust Company, as Agent, Vendor.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company
Two Hopkins Plaza
Baltimore, Maryland 21201

(2) Vendee-Lessor:

Security Pacific Equipment Leasing, Inc.
One Embarcadero Center (Suite 710)
San Francisco, California 94111

(3) Builder-Vendor:

General American Transportation Corporation
120 South Riverside Plaza
Chicago, Illinois 60606

(4) Lessee:

General American Transportation Corporation
120 South Riverside Plaza
Chicago, Illinois 60606

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor-Assignee, the Vendee-Lessor, the Builder-Vendor and the Lessee.

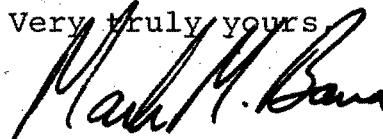
The equipment covered by the aforementioned documents appears on Exhibit A attached hereto.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to

retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours



Mark M. Bava
As Agent for General American
Transportation Corporation

Interstate Commerce Commission,
Washington, D. C. 20423

Attention of Ms. Agatha L. Mergenovich,
Secretary.

Encls.

21

Interstate Commerce Commission
Washington, D.C. 20423

1/12/81

OFFICE OF THE SECRETARY

Mark M. Bava
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **1/12/81** at **3:20pm**, and assigned re-recording number(s). **12755, 12755-A, 12755-B, 12755-C**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

12755 B
RECORDATION NO. _____ FILED 1425

JAN 12 1981 -3 22 PM

INTERSTATE COMMERCE COMMISSION [CS&M Ref: 1629-035]

LEASE OF RAILROAD EQUIPMENT

Dated as of December 15, 1980

Between

GENERAL AMERICAN TRANSPORTATION CORPORATION

and

SECURITY PACIFIC EQUIPMENT LEASING, INC.

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company as Agent for certain institutional investors. The original of this Lease has been stamped "Original" and is held by said Agent.

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LEASE OF RAILROAD EQUIPMENT dated as of December 15, 1980, between GENERAL AMERICAN TRANSPORTATION CORPORATION, a New York corporation (hereinafter called the Lessee), and SECURITY PACIFIC EQUIPMENT LEASING, INC., a Delaware corporation (hereinafter called the Lessor).

The Lessor is entering into a Conditional Sale Agreement dated as of the date hereof with General American Transportation Corporation, a New York corporation (hereinafter in such capacity called the Builder) (hereinafter called the CSA), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment).

Mercantile-Safe Deposit and Trust Company (the Assignee or the Vendor) is acting as agent for New York Life Insurance Company (the Original Investor and, together with its assigns, the Investors) pursuant to the Participation Agreement dated as of the date hereof (the Participation Agreement), among the Assignee, the Lessor, the Lessee and the Original Investor.

The Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the CSA (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided.

The Lessor will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (hereinafter called the Lease Assignment) and the Lessee will consent to the Lease Assignment pursuant to the Consent and Agreement (hereinafter called the Consent).

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease, and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but

not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in the title, condition, design, operation, or fitness for use of any Unit, any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee of the Lessor pursuant to § 12 of this Lease for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee (and any employee thereof designated by the Lessee) its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certifi-

date of acceptance (hereinafter called the Certificate of Acceptance), in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease. The inspection and acceptance by the Lessee of any Unit shall not in any way release any rights which the Lessee may have against the Builder thereof under any warranty relating to such Unit.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit, one interim and 44 consecutive semiannual payments in arrears. The interim payment is payable on July 8, 1981 (such date being hereinafter called the Basic Rent Commencement Date). The 44 semiannual payments are payable on January 8 and July 8 of each year, commencing on January 8, 1982, to and including January 8, 2003 (each of such 44 consecutive dates being sometimes called a Rental Payment Date). The interim rental payable on the Basic Rent Commencement Date for each Unit shall be in an amount equal to the product of (a) the number of calendar days elapsed from and including the Closing Date (as defined in the CSA) for such Unit to, but not including, the Basic Rent Commencement Date, times (b) .0395833% of the CSA Indebtedness (as defined in the CSA) of such Unit. The 44 semiannual rental payments shall each be in an amount equal to the Semi-Annual Lease Factor (as hereinafter defined) of the ~~CSA Indebtedness~~ of each Unit then subject to this Lease. As used herein, the term "Semi-Annual Lease Factor" means 5.036915% or such percentage as it may be adjusted pursuant hereto. The Lessee acknowledges that the semiannual rentals, Casualty Values and Termination Values (both as defined in § 7 hereof) have been computed without taking into account Transaction Expenses in excess of 2% of the Purchase Price (as defined in Article 4 of the CSA) of the Equipment subject to this Lease or any Equipment Deficiency (as defined in the third paragraph of Paragraph 11 of the Participation Agreement). At such time when the Transaction Expenses exceed 2% of such Purchase Price, the Lessee will enter into an amendment to this Lease pursuant to the second paragraph of Para-

* PURCHASE
PRICE \$430
P.A.

graph 11 to the Participation Agreement. In the event there is an Equipment Deficiency, the Lessee will enter into an amendment to this Lease pursuant to the third paragraph of Paragraph 11 of the Participation Agreement. Notwithstanding anything to the contrary set forth herein, the rentals, the Casualty Values and the Termination Values shall at all times be sufficient to satisfy the obligations of the Lessor under the CSA.

If any of the rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next preceding business day without adjustment for interest on such payment for the intervening period. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, San Francisco, California, Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing; provided that any indemnity payable to the Lessor pursuant to § 6, 9 or 17 hereof shall be paid by wire transfer by the Lessee directly to the Lessor.

All payments provided for in this Lease shall be made, not later than 1:00 p.m., Baltimore time, on the date such payment is due, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

All amounts earned in respect of the Units (including, without limitation, mileage charges) during the term of this Lease shall belong to the Lessee and, if received by the Lessor, shall be promptly turned over to the Lessee so long as no Event of Default exists hereunder.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and

acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, 14 and 17 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease, all as provided therein in Article 15 and 16 of the CSA; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment under § 12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one-half inch in height, the words "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee and all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect.

The Units may be lettered, "General American Transportation Corporation", "Union Refrigerator Transit Lines", "GATX", "ATLX", "HFPX", "SWTX", "TCX", "MHLX", "GDCX", "GAOX", "LAPX", "GARX", "SRLX", "URTX", "KGNX", "GACX", "IMFX", "GPBX", "GPEX", "GAEX", "UOCX", "ASHX", "PVRX", "TPBX", "GASX", "GUEX", "AROX", "GCRX", "DOWX", "GGPX", "DRGW", or in some other appropriate manner for convenience of identification of the leasehold interest of the Lessee therein, and may also be lettered, in case of a sublease of any equipment made pursuant to § 12 hereof, in such manner as may be appropriate for convenience of identification of the subleasehold interest therein; but the Lessee, during the continuance of this Lease provided for herein, will not allow the name of any person, firm, association or corporation to be placed on any of the Units as a designation which might be interpreted as a claim of ownership thereof by the Lessee or by any person, firm, association or corporation other than the Lessor.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or local taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the CSA, all of which impositions the Lessee assumes and agrees to pay before they become delinquent in addition to the payments to be made by it provided for herein. The Lessee will also pay before they become delinquent all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall not be under any obligation to pay any impositions of any kind so

long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the CSA. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof, and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment.

In the event that the Lessor shall become obligated to make any payment pursuant to Article 6 of the CSA to the Builder or the Vendor or otherwise pursuant to any correlative provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as (1) will enable the Lessor to fulfill completely its obligations pursuant to said provision and (2) will enable the Lessor to pay any and all Federal and state income taxes payable as a result of the Lessor's receipt of all such amounts.

In the event any reports with regard to impositions are required to be made, the Lessee will, where permitted so to do under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Vendor as shall be reasonably satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this

§ 6, the Lessor hereby authorizes the Lessee to act in the Lessor's own name but with counsel satisfactory to the Lessor and on the Lessor's behalf to perform such duties; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor may reasonably require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 7. Maintenance; Casualty Occurrences;
Insurance; Termination. The Lessee shall, at its own cost and expense, maintain and service each unit of Equipment and comply with a preventive maintenance schedule consistent with the Builder's preventive maintenance schedules and in accordance with normal industry standards, will conform to any condition set forth in the Builder's warranties with respect to each Unit of Equipment during the terms of such warranties, and which will include testing, repair and overhaul of each unit of Equipment so that each unit of Equipment will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) desirable to and suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of resale or re-lease upon an Event of Default hereunder.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the Rental Payment Date next succeeding such notice the Lessee shall pay to the Lessor in addition to the rental payment due and payable on such date an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of

such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale (after deduction of all selling costs).

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in the schedule in Table 1 of Schedule B hereto opposite such date under the caption "Casualty Value Percentage".

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 26.29890% of the Purchase Price of such Unit in the case of the original term of this Lease. In the event that the Lessee exercises its option to extend the original term of this Lease as provided in § 13 hereof for a first extended term the Lessee will pay the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20.00% of the Purchase Price of such Unit and if the Lessee shall extend the Lease for a second extended term, the Lessee and Lessor hereby agree to establish Casualty Values, at such time, for such extended term of this Lease. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale (after deduction of all selling costs).

In the event of the requisition for use by the United States Government (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or § 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units at the time subject hereto; and (ii) public liability insurance with respect to third party personal and property damage. The Lessee will continue to carry such insurance against such risks, in such amounts, with such deductibles and/or self-insurance, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard. In no event will liability coverage for the Lessor be less than \$50,000,000 and up to \$5,000,000 in deductibles thereon will be permitted. The proceeds of any property insurance shall be payable to the Vendor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not have

been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Lessor and the Vendor and (ii) name the Lessor and the Vendor as additional named insureds or loss payees, as their respective interests may appear, and, in the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Lessor and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor and the Vendor) and shall insure the Lessor and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor and the Vendor). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Lessor and the Vendor evidence satisfactory to them of the insurance required to be maintained pursuant to this § 7.

In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Vendor, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the Lessee shall, upon demand, reimburse the Lessor and the Vendor for all expenditures made by the Lessor or the Vendor for such insurance, together with interest thereon computed at the rate set forth in § 16 in respect of overdue rentals from the date of the Vendor's or the Lessor's payment until reimbursed by the Lessee.

If the Lessor shall receive any insurance proceeds from insurance maintained by the Lessee pursuant hereto or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, if no Event of Default and no event has occurred which with the passing of time or the giving of notice would be an Event of Default and subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments up to the amount of the Casualty Value paid to the Lessee. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor and the Vendor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

In the event that the Lessee shall, in its reasonable and good faith judgment, determine that any Group of Units (such Groups being defined by "Type" as set forth in Schedule A to this Lease) have become economically obsolete in the Lessee's business (such Group of Units hereinafter called the Termination Group), the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor, to terminate (hereinafter called a Termination) this Lease as to all (but not less than all) of the Units in such Termination Group (provided, however, that such determination by the Lessee must be with respect of all but not less than all Units with the same Builder's Specifications as set forth in Annex B to the CSA) as of any succeeding rental payment date specified in such notice (the termination date specified in such notice being hereinafter called the Termination Date); provided, however, that (i) no Termination Date shall be earlier than July 8, 1988, (ii) on the Termination Date, no Event of Default or other event which with the lapse of time or notice or both would become an Event of Default shall have occurred and be continuing, (iii) on the Termination Date each Unit in such Termination Group shall be in the same condition as if being redelivered pursuant to § 14 hereof, (iv) on the Termination Date the Lessor shall have paid to the Vendor the Casualty Value (as defined in the third paragraph of Article 7 of the CSA) of the Units in the Termination Group in accordance with the second paragraph of Article 7 of the CSA and (v) on the Termination Date the Lessee shall deliver to the Lessor and the Vendor a certificate signed by the President of the Lessee stating that (a) the Termination Group then subject to termination has become economically obsolete in the Lessee's business and (b) the Lessee has, to the extent permitted thereunder, terminated other leases of equipment employed for similar functions (hereinafter called Similar Equipment) which was placed in service prior to the date the Items in such Group then subject to termination were placed in service. The phrase "economically obsolete" as used in the first sentence of this paragraph does not mean that the Lessee, at the time of termination, is able to purchase, lease or otherwise obtain the use of Similar Equipment at a cost less than that for the Termination Group under this Lease.

If the Lessee shall give notice of its election to terminate under the preceding paragraph, the Lessor may, by written notice to the Lessee given within 30 days after the termination notice is given to the Lessor, elect to retain the Units in the Termination Group for its own account or for sale, in which case on the Termination Date

the Lessor shall pay to the Vendor a sum sufficient to pay the Casualty Value (as defined in the CSA) of the Units in the Termination Group in accordance with Article 7 of the CSA; provided, however, that the Lessor may not make such election unless it can demonstrate, to the satisfaction of the Lessee and the Vendor within said 30-day notice period, that it has made firm arrangements with a creditworthy entity to cause the Casualty Value (as defined in the CSA) of the Units in the Termination Group to be paid to the Vendor on the Termination Date, Lessee shall be notified of the Vendor's satisfaction with such firm arrangements. In the event the Lessor shall so elect to retain such Units, the Lessee shall deliver such Units to the Lessor in accordance with the provisions of § 14 of this Lease.

If the Lessor shall not make the election described in the preceding paragraph, during the period from the 90th day of the giving of the notice by the Lessee until the 35th business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of all Units in the Termination Group then subject to this Lease, and the Lessee shall at least 35 business days prior to the Termination Date certify to the Lessor the amount of each such bid and the name and address of the party submitting such bid (which shall not be the Lessee or a person affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Units). Unless the Lessee shall have directed that all such bids be rejected, on the 30th business day preceding the Termination Date the Lessor shall agree to sell all the Units in the Termination Group for cash, payable on such Termination Date, to the bidder which shall have submitted the highest bid prior to the 30th business day preceding the Termination Date. The net sales proceeds realized, after payments to the Vendor as provided below, shall be retained by the Lessor. On the Termination Date (a) the Lessee shall pay to the Lessor the excess, if any, of the Termination Value (as hereinafter defined) for such Units over the net sales proceeds of such Units, after the deduction of all expenses incurred in connection with such sale, and (b) the Lessor shall pay to the Vendor the Casualty Value (as defined in the CSA) of the Units in the Termination Group in accordance with Article 7 of the CSA. If the Lessee shall have directed that all bids be rejected or no sale shall occur pursuant to this paragraph, this Lease shall continue in full force and effect without change.

The Termination Value of each Unit in the Termination Group as of the Termination Date shall be that

percentage of the Purchase Price of such Unit as is set forth under the caption "Termination Value Percentage" in Schedule B, Table 1 hereto opposite such date, but in no event shall such amount be less than the Casualty Value (as defined in Article 7 of the CSA) of each such Unit, as of such date.

Upon the satisfaction of the conditions set forth in the second proviso to the tenth paragraph of this § 7, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Unit on each rental payment date subsequent to the Termination Date shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all of the Lessor's right, title and interest in and to each Unit in the Termination Group to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all of the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1982, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the CSA have been preserved or replaced. The Lessor and the Vendor or its designee, at its sole cost and expense, shall have the right by its agents, but not the obligation, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws, Rules and Regulations; Indemnification; Regulatory Reports. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF,

OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert, with counsel satisfactory to the Lessor, and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules and regulations of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws

and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense, and title to any additions or improvements so made shall thereupon vest in the Lessor; provided, however, that the Lessee may at its own expense upon written notice thereof to the Lessor and the Vendor, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, and shall be removed by the Lessee, at its expense, upon or prior to return of any Unit to the Lessor pursuant to § 11 or § 14 hereof, unless the Lessor otherwise agrees. The Lessor agrees that it will include in its gross income an amount equal to the fair market value of any improvement or addition to a Unit made by the Lessee which is not readily removable from such Unit without causing material damage to such Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities (including, without limitation, strict liability in tort and product liability), claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of (i) the entering into or the performance of, or the occurrence of a default, an event of default or an Event of Default under, the Participation Agreement, the CSA or this Lease, (ii) the ownership of any Unit, (iii) the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, leasing, manufacturing, storage or return of any Unit, (iv) any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or (v) the transfer of title to the Equipment by the Vendor pursuant to any provision of the CSA. The indemnities arising under this

paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

The indemnities contained in this § 9 shall not extend to any loss, damage, injury, liability, claim, demand, cost, charge, or expense (a) incurred by any indemnified party which is caused by the wilful misconduct of such indemnified party, (b) incurred by the Lessor which is caused by the gross negligence of such indemnified party, (c) incurred by the Vendor which is caused by the gross negligence of such indemnified party, (d) incurred by any indemnified party resulting from acts or events with respect to any Unit which commence after such Unit has been returned to the Lessor in accordance with § 14 hereof, (e) incurred by any indemnified party which results from any lien, charge, security interest or other encumbrance which the Lessee is not required by § 12 hereof to pay or discharge, or (f) incurred by any indemnified party which is otherwise expressly stated in § 6 or § 17 or in any of the other documents related to the transactions contemplated hereby to be borne by such indemnified party.

The Lessee will prepare and deliver to the Lessor and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns except as required by the provisions of § 6 hereof) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

(A) default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for 5 business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement or in the Consent, and such default shall continue for 25 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein or in the Participation Agreement or in any certificate or statement furnished to the Lessor, Vendor or Original Investor pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof; or

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee or any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease, the Participation Agreement or the Consent, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Participation Agreement and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein and in the CSA provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors, assigns or sublessees, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the

Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale. In addition, Lessee shall pay to Lessor any damages and expenses, other than for a failure to pay rental, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental. Any sale in a commercially reasonable manner of any Unit of the Equipment shall conclusively establish the sales value of such Unit.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and disbursements and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit. It is understood, however, that if the Lessor shall terminate this Lease pursuant to clause (b) of this § 10, the unpaid amounts due hereunder after such termination for which the Lessee shall remain liable pursuant to the next preceding sentence shall not be deemed to include any rentals described in the first paragraph of § 3 hereof other than those described in clause (b) of this § 10.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to

make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee covenants to furnish the Vendee and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof and indicating the intention or expectation of the Lessee as to the disposition thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and meet the standards then in effect of the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or any of its affiliates or, at the expense of the Lessee, on any other storage tracks, as the Lessor may reasonably designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for

insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on any lines of railroad or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .027983% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use; Liens.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9 and 10 and the rights to receive the rentals payable under this Lease)

shall inure to the benefit of the Lessor's assigns including the Vendor, except as may be limited in any assignment thereof.

So long as (i) no Event of Default or event of default exists hereunder or under the CSA, (ii) the Lessee shall have fully complied with the provisions of this § 12, (iii) the Lessee is complying with the Consent, and (iv) the Vendor is entitled to apply the Payments (as defined in Paragraph 1 of the Lease Assignment) in accordance with the Lease Assignment, the Lessee and any of its Affiliates (as hereinafter defined) shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. The Lessee shall also be entitled as long as it shall not then be in default under this Lease, to sublease the Units to, or to permit their use under the terms of car contracts by, (i) a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) or Canada (or any Province thereof), upon lines of railroad owned or operated by such railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) or Canada (or any Province thereof), or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers in the usual interchange of traffic in the continental United States or (ii) to responsible companies other than railroad companies for use in their business, in either case only upon and subject to all the terms and conditions of this Lease; provided, however, that if the Lessee subleases or permits the use of any Unit in Canada or Mexico the Lessee shall, except as otherwise provided in § 15 hereof, first have (a) taken all necessary action to protect the right, title and interest of the Lessor and the Vendor in this Lease and in the Units to be so subleased or used and (b) furnished the Lessor and the Vendor with an opinion of Canadian or Mexican counsel, as the case may be, satisfactory to the Lessor and the Vendor to the effect that such action is all that is necessary to protect the right, title and interest of the Lessor and the Vendor in such Units; provided, further, that no Unit shall be used predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee sublease any Unit to, or permit its use by, any person in whose hands such Unit would not qualify as "section 38" property within the meaning of such Code.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease,

shall be entitled to the possession of the Units subject to such sublease and the use thereof and may, subject to § 5 hereof, mark the Units subject to such sublease for convenience of identification of the leasehold of such sublessee therein; provided, however, that every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights and remedies of the Vendor under the CSA and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default thereunder or an Event of Default hereunder; provided, further, that every sublease shall provide that upon notice from the Vendor to any sublessee that an Event of Default (or other event which, with the lapse of time and/or demand could constitute an Event of Default) shall have occurred and be continuing under this Lease, such sublessee shall pay all rental payments under such sublease thereafter falling due to the Vendor. No such sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

Except as otherwise provided in this § 12, the Lessee will not assign or transfer its leasehold interest hereunder, or transfer or sublet any of the Units without the prior written consent of the Lessor and the Vendor. The Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of this § 12.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation (which shall have expressly assumed the obligations of the Lessee hereunder, under the Consent and under the Participation Agreement by an appropriate instrument in writing) incorporated under the laws of any state of the United States of America or the District of Columbia into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

For the purpose of this § 12, "Affiliate" shall mean any corporation which, directly or indirectly, con-

trols or is controlled by, or is under common control with, the Lessee. For the purposes of this definition, "control (including controlled by and under common control with)", as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease or car contract as aforesaid and other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership or leasing of, or the security interest of the Vendor in, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein.

§ 13. Renewal Option; Right of First Refusal.
Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than 180 days prior to the end of the original term of this Lease, elect to extend such original term of this Lease in respect of any Group of Units (as defined in § 7 of this Lease) then subject to this Lease for an additional three-year period commencing on the scheduled expiration of such original term of this Lease. The rental payable with respect to the extended term shall be equal to 50% of the rentals payable after the Basic Rent Commencement Date during the original term of this Lease. Rentals with respect to the extended term shall be payable, in arrears, in semiannual payments on the days of the months on which such rentals were payable for the Units in each year of the original term of this Lease.

Provided that this Lease has not been earlier terminated and the Lease is not in default hereunder, the Lessee may extend such renewal term by written notice delivered to the Lessor not less than 180 days prior to the end of such renewal term of this Lease, elect to extend such renewal term of this Lease in respect of any Group of Units then subject to this Lease for an additional renewal term commencing on the scheduled expiration of such renewal term of this Lease. The rental payable

with respect to the second renewal term shall be a "Fair Market Rental". Rentals with respect to the second renewal term shall be payable, in arrears, in semiannual payments on the days of the months on which such rentals were payable for the Units in each year of the original term.

"Fair Market Rental" shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 40 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules

of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Lessor elects to sell any Group of Units to third parties within one year of the expiration of the original or any extended term of this Lease, the Lessee shall be given written notice of such intention. In the event that the Lessor shall receive, within such one-year period after the end of such original or extended term of the Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase any Group of Units and the Lessor elects to sell any Group of Units pursuant to such offer at the expiration of such original or extended term of this Lease, the Lessor shall give written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party in writing to the Lessor. The Lessee shall have the sole right and option to purchase any Group of Units for cash at the price at which the Group of Units are proposed to be sold or under the other terms and conditions of payment offered by the other party, as hereinafter provided. Within 10 business days of receipt of notice from the Lessor, the Lessee shall exercise such purchase right by delivery to the Lessor of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Lessor, or (ii) one year after the expiration of such original or extended term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase any Group of Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase.

§ 14. Return of Units upon Expiration of Term.
As soon as practicable but not longer than 60 days after a Termination or the expiration of the original or the

extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of each Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to the nearest railroad interconnection, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will, at its own cost and expense, insure, maintain and keep each Unit in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and (ii) meet the standards in effect upon the expiration of this Lease under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned after the expiration or a Termination of this Lease with respect to a Unit shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 45 days after a Termination, the Lessee shall, in addition pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .027983% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA and each assignment hereof or thereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignment thereof to the Vendor; provided, however, that the Lessee shall not be required to take any such action in respect of any jurisdiction outside the United States of America if (1) such action is unduly burdensome, (2) after giving effect to the failure to take such action, the Lessee has taken all action required by law to protect the title of the Lessor to and the security interest of the Vendor in Units having a Fair Value (as hereinafter defined) of not less than 90% of the aggregate Fair Value of all the Units then subject to this Lease, and (3) any Unit at any time located in such jurisdiction shall have been marked with the markings specified in § 5 hereof.

For the purpose of this § 15, the "Fair Value" of any Unit shall be deemed to be the greater of (a) the actual fair market value thereof and (b) the Purchase Price thereof (as defined in Article 4 of the CSA) less 1/25th of such Cost for each full period of one year elapsed between the date such Unit was first placed in service and the date as of which Fair Value is to be determined.

The Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the CSA shall be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpay-

ment of rent due hereunder shall result in the additional obligation on the part of the Lessee to pay also an amount equal to the lesser of (i) the highest rate permitted by applicable law or (ii) the rate which is the greater of (x) 15-1/4% per annum or (y) the rate at the time charged by Security Pacific National Bank plus two percentage points, for 90-day loans to its most favored customers on the overdue rentals or other obligations of the Lessee hereunder for the period of time during which they are overdue.

§ 17. Indemnity for Federal and Other Income Taxes. (a) In entering into this Lease it is the intention of the Lessor and the Lessee that this Lease will be recognized as a true lease for Federal, state and local income tax purposes. The Lessee hereby represents that, for the purposes of Federal, state and local income tax, the Lessor will be entitled to deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (hereinafter called the Code), the Treasury Regulations thereunder, and state and local taxing statutes to an owner of property (hereinafter called the Tax Benefits), including, without limitation:

(i) the maximum deductions for depreciation of the Units under section 167 of the Code (hereinafter called the ADR Deductions) computed on the basis (A) that the Units will have a depreciable basis under section 167(g) of the Code at least equivalent to the Purchase Price of the Units, (B) of the double-declining balance method of depreciation authorized by section 167(b)(2) of the Code, switching to the sum of the years-digits method of depreciation authorized by section 167(b)(3) of the Code without the consent of the Commissioner of Internal Revenue when most beneficial to the Beneficiary, (C) of the asset depreciation range system of Treasury Regulation Section 1.167(a)-11, (D) of an asset depreciation period of 12 years prescribed in the Asset Guideline Class No. 00.25 in accordance with Section 167(m) of the Code, (E) of a salvage value of zero after giving effect to the reduction allowed by 167(f)(1) of the Code and (F) utilizing the modified half-year convention as provided in Reg. Sec. 1.167(a) (including 12 months of depreciation in 1981);

(ii) deductions with respect to interest and premium payable on the CSA Indebtedness (as defined in the CSA) (hereinafter called the Interest Deduc-

tions) for any period during which the CSA Indebtedness is held by any person other than the Lessor; and

(iii) the credit allowed by section 38 and related sections of the Code for "new section 38 property" (hereinafter called the Investment Tax Credit) equal to 10% of the Purchase Price of Units.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due thereunder, except as specifically provided in this Lease, and that the Lessee will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the benefit of the ADR Deductions and the Interest Deductions with respect to the Units. The Lessee agrees to cooperate with the Lessor in the event that the Lessor seeks to obtain a tax ruling from the Internal Revenue Service concerning this transaction.

The Lessee represents and warrants that (i) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Sections 46 and 48 of the Code, and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (ii) the Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of Section 48(a) of the Code. The Lessee agrees to maintain sufficient records to verify use of the Units in the manner above provided, which records will be made available for inspection and copying to the Lessor within 30 days after receipt of a written demand therefor.

The Lessee represents and warrants but does not hereby guarantee that (i) the expected useful life of the Units is at least 32 years and (ii) it expects that at the end of the original and first extended term of this Lease, the Units will have a fair market value of at least 20% of the Purchase Price thereof without including in such value any increase or decrease for inflation or deflation during the term of this Lease and after subtracting from such value any cost to the Lessor for removal and delivery of possession of the Units to the Lessor at the end of the primary term of this Lease. The Lessee agrees that not later than the First Delivery Date (as defined in the Participation Agreement) it will deliver, or cause to be delivered, to the Lessor a certificate, addressed to the Lessor, of an independent appraiser satisfactory in form and substance to the Lessor.

If by reason of the inaccuracy in law or in fact of any of the representations and warranties, or by reason of the inaccuracy of the useful life and fair market value expectations, set forth in this § 17(a), or any amendment to the Code or Treasury Regulations thereunder enacted and effective prior to January 1, 1982 that decrease the Tax Benefits to the Lessor, or the breach by the Lessee of any of its agreements hereunder or any act or omission of the Lessee (regardless of whether any such act or omission is permitted by the terms of this Lease or required by the terms of § 9 hereof) the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the Tax Benefits with respect to all or any part of any Unit (any such loss, disallowance, recapture or treatment being hereinafter called a Loss), then in any such case the Lessee shall pay to the Lessor on each of the dates provided in this Lease thereafter for payment of the installments of rental thereunder commencing with the first such date following the date on which the liability of the Lessee hereunder shall become fixed as hereinafter provided, such sums which (after deduction of all taxes required to be paid by the Lessor on the payment of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate), when taken together with the portion of the rental installments due on such dates under the Lease which are to be distributed to the Lessor, will, in the reasonable opinion

of the Lessor, maintain the Lessor's net after-tax return on and rate of recovery of investment and the total cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit hereunder and under the Participation Agreement at the same level that would have been available if such Loss had not occurred, and the Lessee shall forthwith pay to the Lessor an amount which (after the deduction of any additional taxes required to be paid in respect of the receipt of such amount calculated on the assumption that such taxes are payable at the highest then applicable marginal tax rate) shall be equal to the amount of any interest or penalty which may be imposed in connection with such Loss; provided, however, that no such adjustment shall change the return of the Investor under the Participation Agreement without the Investor's consent and the Lessor and Lessee shall have received the opinion of independent tax counsel that such adjustment is in accordance with IRS leveraged lease guidelines, said opinion to be provided by the party requesting the adjustment. In the event that this Lease is terminated with respect to any Unit prior to the time the Lessee is obligated to make payments to the Lessor as set forth in the preceding sentence (either because no such payment obligation had become fixed under such sentence prior to such termination or because the due date of such payment or payments shall occur following such termination), then the Lessee shall pay to the Lessor, in lieu of such payment or payments, on or before 30 days after the liability of the Lessee in respect of such termination and hereunder shall become fixed as hereinafter provided, such lump sum (calculated in the same manner as set forth in the preceding sentence) as shall be necessary in the reasonable opinion of the Lessor to maintain the Lessor's net after-tax return on and rate of recovery of investment and the total cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit hereunder and under the Participation Agreement at the same level that would have been available if such Loss had not occurred. In determining the extent to which the Lessor receives credit for any foreign tax against its Federal income tax liability, it shall be assumed that credit is received for all other foreign taxes claimed as credits for the taxable year in question before credit is received for any foreign taxes indemnified hereunder which are claimed as credits for such year.

In the event of a change in the Code or Treasury Regulations thereunder, enacted and effective prior to January 1, 1982, that increases the Tax Benefits to the Lessor, the Lessor shall increase the unfinanced portion of the Purchase Price (as defined in the first paragraph of Article 4 of the CSA) by the lesser of 20% or \$1,300,000 thereof, but in no event shall a Special Prepayment (as defined in the last paragraph of Article 7 of the CSA) reduce the financed portion of the Purchase Price to less than \$4,400,000. Thereafter, the rentals shall be decreased, provided that the Lessor's after-tax economic yield shall be increased by not less than 100 basis points and its after-tax total cash flow shall be at least 51% of the unfinanced portion of the Purchase Price.

Anything in the fifth paragraph of this § 17 to the contrary notwithstanding, the Lessee shall not be required to make any payment to the Lessor provided for therein if the Lessor shall have suffered any Loss with respect to all or part of any Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Agent the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any of its interest in such Unit or the voluntary reduction by the Lessor of its interest in the rentals from such Unit hereunder (other than pursuant to the assignment of this Lease to the Agent), unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Lessor to claim in a timely manner the Investment Tax Credit, the ADR Deductions or the Interest Deductions (unless the Lessor shall have received an opinion of its tax counsel to the effect that it is not entitled to make such claim); or

(iv) the failure of the Lessor to have sufficient liability for tax against which to credit the Investment Tax Credit or sufficient income to benefit from the ADR Deductions or the Interest Deductions, as applicable.

In the event a claim shall be made against the Lessor which, if successful, would result in payments by the Lessee hereunder and if, in the opinion of independent tax counsel selected by the Lessee who is acceptable to such

Lessor (herein referred to as Counsel), a bona fide defense to such claim exists, the Lessor shall, upon request and at the expense of the Lessee, contest such matter in such forum as the Lessee, in its sole judgment, shall select. The Lessor shall not be obligated to take any such legal or other appropriate action unless it has received an opinion from Counsel that there is a reasonable basis for contesting such matter and the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. At the Lessee's option, the action to be taken can be commenced prior to making payment of any tax and interest and/or penalty attributable to such claim (hereinafter called a Tax Payment) or after making such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such sums payable hereunder need not be paid by the Lessee while such action is pending; provided that the Lessee shall pay the liabilities and expenses relating to such action when and as the same shall become due. In such case, if the Final Determination (as defined in the next paragraph of this section) shall be adverse to the Lessor, the sums payable hereunder shall be computed by the Lessor as of the date of such Final Determination, the Lessor shall notify the Lessee of such computation and the Lessee shall commence payment thereof on the rental payment date hereunder next succeeding such Final Determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as an additional payment hereunder an amount which (after deduction of all taxes required to be paid by the Lessor on the payment of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority, in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate) shall be equal to all interest and penalty paid by the Lessor in respect of such Final Determination, together with interest thereon from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor thereof at the rate of 14-1/4% per annum, determined on an actual elapsed day, 365-day year, basis. If the Lessor makes such Tax Payment prior to contesting the matter, and then sues for a refund, the sums payable hereunder shall commence to be payable by the Lessee on the first rental payment date hereunder after the Lessor notifies the Lessee that such Tax Payment has been made and, on or before such rental payment date, the Lessee shall pay to the Lessor as an additional payment hereunder an amount which (after deduction of all taxes

required to be paid by the Lessor on the payment of such sums under the laws of the United States or any political subdivision thereof or any foreign taxing authority in each case calculated on the assumption that such tax is payable at the highest then applicable marginal tax rate), shall be equal to all interest and penalty paid by the Lessor included in such Tax Payment. If the Lessor sues for a refund after making such Tax Payment, and if the Final Determination shall be in favor of the Lessor, no future payments shall be due hereunder in respect of such matter (or an appropriate reduction shall be made if the Final Determination is partly in favor of and partly adverse to the Lessor). In addition, the Lessee and the Lessor shall adjust their accounts so that (a) the Lessor pays to the Lessee (x) an amount equal to the sums theretofore paid by the Lessee to the Lessor in respect of the Tax Payment (or a proportionate part thereof if the Final Determination is partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest on the amount of such sums refunded by the United States at the interest rate currently paid on tax overpayments by the United States for the period such sums were paid to the Lessor to the date the Lessor pays to the Lessee an amount equal to such sums, and (y) the amount of any penalty or interest refunded to the Lessor as a result of such Final Determination and any interest paid to the Lessor by the Federal Government on such refund, promptly upon receipt thereof and (b) the Lessee pays to the Lessor an amount equal to interest at the rate of 14-1/4% per annum, determined on an actual elapsed day, 365-day year basis, on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor. If any such claim referred to above shall be made by the Internal Revenue Service and the Lessee shall reasonably have requested the Lessor to contest such claim as above provided and shall have duly complied with all of the terms of this § 17(a), the Lessor may elect not to contest any such claim despite the request of the Lessee, made in accordance with the terms of this paragraph, or to discontinue any proceedings previously commenced as a consequence of such request, and thereupon the Lessee shall be relieved of all liability to indemnify the Lessor with respect to the Tax Benefits involved in respect of such claim.

"Final Determination" for the purpose of the preceding paragraph, means a final decision of a court of competent jurisdiction after all allowable appeals have been exhausted by either party to the action. Neither concession by the Lessor of any of the aforementioned claims in the overall settlement of a controversy with the Internal Revenue Service either at the administrative level or at the court level nor the failure to recover a refund in whole or in part with respect to such claims which failure is the result of a setoff against a claim for refund based upon such claims where the matters set off do not relate to such claims will constitute an adverse Final Determination causing the aforementioned additional payments to accrue to such Lessor, unless such overall settlement or setoff of a tax controversy with the Internal Revenue Service is approved by the Lessee in a separate agreement with the Lessor and the Lessee. If the Lessee does not request the Lessor to contest a claim, then the Lessee's liability hereunder shall become fixed when the Lessee receives notice of a Loss from the Lessor.

In the event payments shall be due the Lessor under this § 17, the Casualty Values and the Termination Values set forth in § 7 hereof shall be adjusted accordingly; provided, however, that no adjustment of such Casualty Values or Termination Values shall be made that will result in reducing either such Value below the amount of the outstanding CSA Indebtedness, in which case payments otherwise due under this § 17 shall be adjusted accordingly.

In addition to the foregoing, if by reason of any act of commission or omission (including any act required by the terms hereof), misrepresentation, breach of any agreement, covenant or warranty contained herein or in the Participation Agreement, on the part of the Lessee or any sublessee of the Lessee, or if by reason of any act or omission of the Lessor or its agents following the occurrence and continuation of an Event of Default under this Lease which constitutes a proper exercise of a remedy therefor under this Lease, any payments by the Lessee under this Lease shall be characterized for Federal income tax purposes of the Lessor as gross income from sources without the United States and any part of the ADR Deductions and/or the Interest Deductions of the Lessor is required to be allocated to such gross income with the result that there is any taxable period of the Lessor

negative taxable income from sources without the United States attributable to the Units (hereinafter called Foreign Source Losses) and if such Foreign Source Losses result in a reduction of the foreign tax credits which would otherwise be available to the Lessor in such taxable period in the absence of such Foreign Source Losses, the Lessee shall pay to the Lessor an amount which, after deduction of the net amount of all taxes which would be required to be paid by the Lessor in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority in the United States or in any foreign country which has jurisdiction to tax the Lessor, shall be equal to the amount of any interest, penalties or additions to tax payable with respect thereto.

(b) In the event and to the extent that the cost of any replacement, improvement and/or addition to any Unit or any expenditure by the Lessee in respect of any Unit or this Lease (hereinafter called Additional Expenditures) made by the Lessee, under and pursuant to the terms of this Lease or otherwise, is required to be included in the gross income of the Lessor for Federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the Lessee hereby agrees that it will pay to the Lessor on each of the dates provided in this Lease for payment of the installments of rental thereunder in respect of such Unit commencing with the first such date following the date on which such inclusion is required, such sums (on account of taxes and related interest and penalties) which (after deduction of all taxes required to be paid by the Lessor with respect to the receipt thereof under the laws of the United States or any political subdivision thereof at the highest marginal corporate rates), when taken together with the rental installments due on such dates hereunder in respect of such Unit, will, in the reasonable opinion of the Lessor, maintain the Lessor's after-tax return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit hereunder and under the Participation Agreement at the same level that would have been available if the cost or value of such Additional Expenditures had not been treated as income to the Lessor.

(c) For purposes of this § 17, the term "Lessor" shall include any affiliated group of which the Lessor is a

member if consolidated, joint, or combined returns are filed for such affiliated group for Federal, state or local income tax purposes. For the purposes of this § 17, the term "penalty" or "penalties" shall mean only a penalty or penalties no part of which would have been imposed but for this Lease.

(d) All payments provided to be made to the Lessor by the Lessee pursuant to this § 17 shall be made by wire transfer of immediately available funds to such bank in the continental United States for the account of the Lessor as the Lessor from time to time shall have directed the Lessee in writing.

(e) All the rights and privileges of the Lessor arising from the indemnities contained in this § 17 shall survive the expiration or other termination of this Lease and such indemnities are expressly made for the benefit of and shall be enforceable by the Lessor, its successors and assigns.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Embarcadero Center, San Francisco, California 94111, Attention of Manager Leveraged Leasing, with a copy to GATX Leasing Corporation at such address as it shall have furnished for such purpose;

(b) if to the Lessee, at 120 South Riverside Plaza, Chicago, Illinois 60606, Attention of Law Department;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at P. O. Box 2258, Two Hopkins Plaza, Baltimore, Maryland 21203 Attention of Corporate Trust Department or as the Vendor may otherwise specify.

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such

jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the exhibits thereto, this Lease exclusively and completely states the rights and obligations of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

The Lessee shall be liable for all reasonable attorneys' fees and other costs and expenses incurred in connection with any amendments, supplements and waivers with respect to this Lease.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original, and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and other applicable Federal statutes, rules and regulations, such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited or in which any Unit of Equipment shall be located, and any rights arising out of the markings on the Units of the Equipment.

§ 22. No Guarantee of CSA Indebtedness or Residual Value. Nothing in this Agreement is intended or

shall be construed to constitute a guarantee by the Lessee of the CSA Indebtedness under the CSA or a guarantee of the residual value of any Unit.

§ 23. Immunities; No Recourse. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.


IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

GENERAL AMERICAN
TRANSPORTATION CORPORATION,

[Corporate Seal]

by

Attest:


Assistant Secretary

SECURITY PACIFIC EQUIPMENT
LEASING, INC.,

[Corporate Seal]

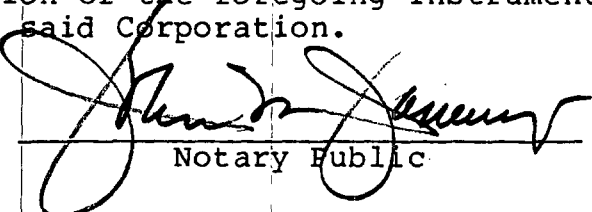
by

Attest:

Assistant Secretary

STATE OF ^{ILLINOIS} ~~NEW YORK~~,)
) ss.:
COUNTY OF ^{COOK} ~~NEW YORK~~,)

On this 5 day of January 1981 before me personally appeared Alfred S. Gerschlager, to me personally known, who, being by me duly sworn, says that he is the Treasurer of GENERAL AMERICAN TRANSPORTATION CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.


Notary Public

[Notarial Seal]

My Commission expires OCTOBER 5 '88

STATE OF CALIFORNIA,)
) ss.:
COUNTY OF SAN FRANCISCO,)

On this day of January 1981 before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of SECURITY PACIFIC EQUIPMENT LEASING, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

shall be construed to constitute a guarantee by the Lessee of the CSA Indebtedness under the CSA or a guarantee of the residual value of any Unit.

§ 23. Immunities; No Recourse. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

GENERAL AMERICAN
TRANSPORTATION CORPORATION,

[Corporate Seal]

by _____

Attest:

Assistant Secretary

SECURITY PACIFIC EQUIPMENT
LEASING, INC.,

[Corporate Seal]

by *Manfred Muehl*
Secretary

Attest:

Candace L. Hage
Assistant Secretary
Associate Counsel

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of January 1981 before me
personally appeared , to me personally
known, who, being by me duly sworn, says that he is the
 of GENERAL AMERICAN TRANSPORTATION CORPORATION,
that one of the seals affixed to the foregoing instrument
is the corporate seal of said Corporation, that said
instrument was signed and sealed on behalf of said Corpo-
ration by authority of its Board of Directors, and he
acknowledged that the execution of the foregoing instrument
was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CALIFORNIA,)
) ss.:
COUNTY OF SAN FRANCISCO,)

On this *9th* day of January 1981 before me
personally appeared *MARC L. MARKER* , to me personally
known, who, being by me duly sworn, says that he is an
Authorized Officer of SECURITY PACIFIC EQUIPMENT LEASING,
INC., that one of the seals affixed to the foregoing
instrument is the corporate seal of said Corporation and
that said instrument was signed and sealed on behalf of
said Corporation by authority of its Board of Directors
and he acknowledged that the execution of the foregoing
instrument was the free act and deed of said Corporation.



[Notarial Seal]

My Commission expires *4/21/81*

Gail D. Smedal

Notary Public

Lease of Railroad Equipment

SCHEDULE A

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
50% Caustic Soda	DOT 111A 100W-1	15,750 gal.	1	GATX 300765
Molten Sulfur	DOT 111A 100W-1	13,250	33	GATX 300772, 300779, 300781, 300784, 300801, 300804, 300805, 300806, 300881 to 300905
Molten Sulfur	DOT 111A 100W-1	13,250	25	GATX 300921 to 300945
Gas./Gen. Ser.	DOT 111A 100W-1	29,200	35	GATX 300946 to 300980
Molten Sulfur	DOT 111A 100W-1	13,250	33	GATX 300981 to 301013
Hydrochloric Acid	DOT 111A 100W-5	20,000	16	GATX 301035 to 301050
Propylene Oxide	DOT 111A 100W-1	29,200	25	GATX 301051 to 301075
Clay Slurry	DOT 111A 100W-1	13,650	11	GATX 301078 to 301088
			<hr/> 179	

SCHEDULE B TO LEASE

Casualty and Termination Value Percentage

Table 1

<u>Rental Payment Date</u>	<u>Casualty Value Percentage</u>	<u>Termination Value Percentage</u>
July 8, 1981 (Interim Rental Payment Date)	110.12974	
January 8, 1982	110.12974	
July 8, 1982	109.08466	
January 8, 1983	113.73993	
July 8, 1983	112.66213	
January 8, 1984	116.33236	
July 8, 1984	115.20282	
January 8, 1985	111.28462	
July 8, 1985	110.07875	
January 8, 1986	111.97753	
July 8, 1986	110.67363	
January 8, 1987	105.11260	
July 8, 1987	103.69354	
January 8, 1988	104.08732	104.08732
July 8, 1988	102.54145	102.54145
January 8, 1989	95.62420	95.62420
July 8, 1989	93.94634	93.94634
January 8, 1990	93.14570	93.14570
July 8, 1990	91.33837	91.33837
January 8, 1991	90.07555	90.07555
July 8, 1991	88.15209	88.15209
January 8, 1992	86.53069	86.53069
July 8, 1992	84.50652	84.50652
January 8, 1993	82.61396	82.61396
July 8, 1993	80.48666	80.48666
January 8, 1994	78.40381	78.40381
July 8, 1994	76.14290	76.14290
January 8, 1995	73.89448	73.89448
July 8, 1995	71.48391	71.48391
January 8, 1996	69.06133	69.06133
July 8, 1996	66.48680	66.48680
January 8, 1997	63.88440	63.88440
July 8, 1997	61.13365	61.13365
January 8, 1998	58.34207	58.34207
July 8, 1998	55.40208	55.40208
January 8, 1999	52.49273	52.49273
July 8, 1999	49.54041	49.54041

<u>Rental Payment Date</u>	<u>Casualty Value Percentage</u>	<u>Termination Value Percentage</u>
January 8, 2000	46.64438	46.64438
July 8, 2000	43.74103	43.74103
January 8, 2001	40.92152	40.92152
July 8, 2001	38.13904	38.13904
January 8, 2002	35.47720	35.47720
July 8, 2002	32.60232	32.60232
January 8, 2003	29.56109	29.56109
July 8, 2003	26.29890	26.29890

In the event of a first extended rental period:

January 8, 2004	25.35718	25.35718
July 8, 2004	24.41584	24.41584
January 8, 2005	23.42128	23.42128
July 8, 2005	22.35186	22.35186
January 8, 2006	21.21449	21.21449
July 8, 2006	20.00000	20.00000

Table 2

The percentages set forth in Table 1 of this Schedule B have been computed to take into account recapture of the Investment Tax Credit (as defined in § 17 relating to certain tax indemnities) as applicable. If a Unit shall suffer a Casualty Occurrence after the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit and before the next succeeding rental payment date and the Lessor shall not be required to recapture all or a portion of the Investment Tax Credit by virtue of such Casualty Occurrence, the amount determined from Schedule I shall be reduced by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third	6.806
Fifth	6.806
Seventh	6.806